

**Maryland General Assembly  
Department of Legislative Services**

**Emergency/Proposed Regulation  
Maryland State Lottery and Gaming Control Agency  
(DLS Control No. 14-185)**

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**Overview and Legal and Fiscal Impact**

This emergency/proposed regulation establishes a “look back” period for determining whether an act committed in the past automatically disqualifies an applicant for a video lottery operation license.

The regulation presents a potential legal issue of concern, as discussed below.

There is no fiscal impact on State or local agencies.

**Regulation of COMAR Affected**

**Maryland State Lottery and Gaming Control Agency:**

Gaming Provisions: Video Lottery Operation License: COMAR 36.03.03.04

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**Legal Analysis**

**Background**

Under current regulations, an applicant for a video lottery operation license must be disqualified for the license if the applicant committed an act in the State constituting a criminal offense involving moral turpitude or a gambling offense and the act was not or cannot be prosecuted. Chapters 40 and 41 of 2013 amended a similar requirement for automatic disqualification applicable to employee license applicants by establishing a seven year look back period. Thus, for *employee* license applicants, a criminal offense involving moral turpitude or a gambling offense that is more than seven years old is not grounds for automatic disqualification.

**Summary of Regulation**

The regulation establishes a look back period of seven years for *operation* license applicants for acts involving criminal offenses of moral turpitude or gambling offenses committed in the State or outside of the State. As a result, an applicant for an operation license must be disqualified only if the disqualifying act was committed within seven years before the date of the application, regardless of where it was committed.

The regulation thus conforms the look back period for applicants for video lottery operation licenses to the seven-year period afforded to applicants for video lottery employee licenses enacted by Chapters 40 and 41 of 2013.

## **Legal Issue**

As noted, Chapters 40 and 41 of 2013 established a seven year look back period applicable only to employee license applicants. Chapters 40 and 41 amended § 9-1A-14 of the State Government Article, which applies to employee licenses, but did not amend § 9-1A-08, which applies to video lottery operation license applicants. Further, there is no evidence that the General Assembly considered that SB 282 or HB 1053 (Chapters 40 and 41) would apply to applicants for any license other than an employee license. In the absence of similar legislation to establish a seven year look back period for operation license applicants, it is unclear that there is sufficient statutory authority for the State Lottery and Gaming Control Agency to establish, by regulation, a seven year look back period for those applicants.

## **Statutory Authority and Legislative Intent**

The agency cites § 9-1A-08 of the State Government Article as authority for the regulation. That section lists grounds for which the commission must disqualify an applicant for a video lottery operation license, including committing an act that would constitute an offense involving moral turpitude or a gambling offense, even if the act has not been or may not be prosecuted under the criminal laws of the State. The agency should have cited § 9-1A-04(d) of the State Government Article, which provides the agency with the authority to adopt regulations governing numerous specified items, as well as other provisions of the video lottery terminal subtitle. With the addition of this section, the agency's citation of authority is correct and complete. However, as noted above, it is not clear that the regulation complies with the legislative intent of the law pertaining to the disqualification of video lottery operation license applicants.

## **Reason for Emergency Status**

The agency states that this regulation is needed in time for the opening of the Baltimore City casino, which is scheduled for August 26, 2014. The agency is requesting emergency status beginning July 25, 2014 and expiring on December 26, 2014. This period is within normal timeframes approved by the committee.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

## **Agency Estimate of Projected Fiscal Impact**

The regulation implements provisions of Chapters 40 and 41 of 2013 that limit the requirement for denying a video lottery employee license. The agency advises that the regulation has no impact on State or local governments. The Department of Legislative Services concurs that there is no impact beyond the fiscal and policy note estimates for Chapters 40 and 41 of 2013, which assumed that altering the qualifications for video lottery employee licenses does not affect governmental finances because the license application fee revenues cover any additional costs incurred by the State Lottery and Gaming Control Commission.

## **Impact on Budget**

There is no impact on the State operating or capital budget.

## **Agency Estimate of Projected Small Business Impact**

The agency advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

## **Contact Information**

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